

1 APPEARANCES OF COUNSEL:


2
3 FOR THE PLAINTIFF, UNITED STATES OF AMERICA:

4 THOMAS P. O'BRIEN
5 UNITED STATES ATTORNEY

6 ROBB C. ADKINS
7 ASSISTANT UNITED STATES ATTORNEY
8 CHIEF, CRIMINAL DIVISION

9 ANDREW STOLPER
10 ASSISTANT UNITED STATES ATTORNEY
11 UNITED STATES DISTRICT COURT
12 8000 RONALD REAGAN FEDERAL BUILDING
13 SANTA ANA, CALIFORNIA 92701
14 (714) 338-3500

15
16 FOR THE DEFENDANT, ALLEN JOHNSON:

17 JAMES RIDDET
18 STOKKE & RIDDET
19 3 IMPERIAL PROMENADE
20 SUITE 750
21 SANTA ANA, CALIFORNIA 92707
22 (714) 662-2400
23 

1 SANTA ANA, CALIFORNIA; FRIDAY, MARCH 18, 2005; 9:00 A.M.

2 THE CLERK: PLEASE BE SEATED AND COME TO ORDER.

3 SACR 05-36-JVS, UNITED STATES OF AMERICA VERSUS
4 ALLEN JOHNSON.

5 COUNSEL, PLEASE STATE YOUR APPEARANCES.

6 MR. STOLPER: GOOD MORNING, YOUR HONOR.

7 ANDREW STOLPER ON BEHALF OF THE GOVERNMENT.

8 MR. RIDDET: GOOD MORNING, YOUR HONOR.

9 JAMES RIDDET FOR MR. JOHNSON. HE'S WITH ME AT THE
10 LECTERN.

11 THE COURT: GOOD MORNING.

12 MR. RIDDET, I UNDERSTAND THERE WILL BE A CHANGE OF
13 PLEA THIS MORNING.

14 MR. RIDDET: YES, YOUR HONOR.

15 THE COURT: I NOTE THAT A PLEA AGREEMENT WAS FILED
16 IN THIS MATTER ON MARCH 14TH, 2005.

17 I WILL DIRECT THAT THE PLEA AGREEMENT WILL BE MADE
18 A PART OF THESE PROCEEDINGS.

19 GOOD MORNING, MR. JOHNSON.

20 DEFENDANT JOHNSON: GOOD MORNING.

21 THE COURT: SIR, BEFORE I ACCEPT YOUR PLEA OF
22 GUILTY, I MUST SATISFY MYSELF THAT YOU UNDERSTAND THE NATURE
23 OF THE CHARGES AGAINST YOU, ANY POSSIBLE PUNISHMENT YOU MAY
24 RECEIVE AND THAT YOU ALSO UNDERSTAND THE CONSTITUTIONAL AND
25 STATUTORY RIGHTS YOU WILL BE GIVING UP BY PLEADING GUILTY.

1 FOR THAT REASON, I'M GOING TO ASK YOU A NUMBER OF QUESTIONS.
2 IF ANY OF MY QUESTIONS ARE NOT CLEAR, I'LL BE GLAD TO
3 REPHRASE THEM; PLEASE JUST LET ME KNOW THAT.

4 YOU HAVE THE RIGHT TO CONSULT WITH MR. RIDDET AT
5 ANY TIME. HE'S HERE FOR YOUR BENEFIT. SO, IF AT ANY POINT
6 DURING THESE PROCEEDINGS YOU WOULD LIKE TO CONSULT WITH HIM,
7 PLEASE JUST LET ME KNOW.

8 DEFENDANT JOHNSON: OKAY.

9 THE COURT: THE CLERK IS GOING TO PUT YOU UNDER
10 OATH AT THIS TIME.

11 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

12 ALLEN EDWARD JOHNSON, DEFENDANT, SWORN

13 DEFENDANT JOHNSON: I DO.

14 THE COURT: SIR, DO YOU UNDERSTAND THAT YOU ARE
15 NOW UNDER OATH; THAT IF YOU ANSWER ANY OF MY QUESTIONS
16 FALSELY, YOU COULD BE PROSECUTED LATER FOR PERJURY OR THE
17 MAKING OF A FALSE STATEMENT?

18 DEFENDANT JOHNSON: YES.

19 THE COURT: STATE YOUR TRUE AND CORRECT NAME,
20 PLEASE.

21 DEFENDANT JOHNSON: ALLEN EDWARD JOHNSON.

22 THE COURT: HOW OLD ARE YOU, SIR?

23 DEFENDANT JOHNSON: 58.

24 THE COURT: TELL ME ABOUT YOUR EDUCATIONAL
25 BACKGROUND, PLEASE.

1 DEFENDANT JOHNSON: I HAVE A BACHELOR'S DEGREE IN
2 ECONOMICS FROM UC SANTA BARBARA. I'VE GOT A JD FROM
3 CALIFORNIA WESTERN SCHOOL OF LAW IN SAN DIEGO.

4 THE COURT: ARE YOU ADMITTED TO THE BAR?

5 DEFENDANT JOHNSON: YES.

6 THE COURT: IS YOUR MEMBERSHIP CURRENTLY ACTIVE?

7 DEFENDANT JOHNSON: YES.

8 THE COURT: HAVE YOU EVER PRACTICED CRIMINAL LAW?

9 DEFENDANT JOHNSON: NO.

10 THE COURT: HAVE YOU RECENTLY BEEN TREATED FOR ANY
11 MENTAL ILLNESS OR ADDICTION TO NARCOTICS?

12 DEFENDANT JOHNSON: NO. THE ONLY ILLNESS I HAVE
13 IS RHEUMATOID ARTHRITIS.

14 THE COURT: HAVE YOU TAKEN ANY MEDICATION, DRUGS
15 OR ALCOHOL WITHIN THE PAST 72 HOURS?

16 DEFENDANT JOHNSON: NO.

17 THE COURT: HAVE YOU TAKEN ANY TREATMENT FOR YOUR
18 ARTHRITIS?

19 DEFENDANT JOHNSON: NO, I DON'T TAKE ANYTHING FOR
20 IT ANYMORE.

21 THE COURT: DO YOU SUFFER FROM ANY MENTAL
22 CONDITION THAT WILL PREVENT YOU FROM UNDERSTANDING FULLY THE
23 CHARGES AGAINST YOU AND THE CONSEQUENCES OF ANY GUILTY PLEA
24 YOU MAY ENTER?

25 DEFENDANT JOHNSON: DO I UNDERSTAND?

1 THE COURT: RIGHT. DO YOU SUFFER FROM ANY MENTAL
2 CONDITION THAT WOULD PREVENT YOU FROM UNDERSTANDING FULLY
3 THE NATURE OF THE CHARGES AND ANY PUNISHMENT YOU MIGHT
4 RECEIVE?

5 DEFENDANT JOHNSON: NO, I DON'T.

6 THE COURT: IS THERE ANY REASON WHY WE CAN'T GO
7 FORWARD WITH YOUR PLEA OF GUILTY THIS MORNING?

8 DEFENDANT JOHNSON: NO, I DON'T BELIEVE SO.

9 THE COURT: YOU FEEL ALERT TODAY?

10 DEFENDANT JOHNSON: YES.

11 THE COURT: DO YOU FEEL YOUR HEALTH IS GOOD TODAY?

12 DEFENDANT JOHNSON: REASONABLY, YES.

13 THE COURT: MR. RIDDET, HAVE YOU HAD OPPORTUNITY
14 TO SPEAK WITH YOUR CLIENT PRIOR TO THESE PROCEEDINGS?

15 MR. RIDDET: I HAVE, YOUR HONOR.

16 THE COURT: DO YOU HAVE ANY REASON TO BELIEVE THAT
17 MR. JOHNSON IS NOT COMPETENT TO ENTER HIS PLEA AT THIS TIME?

18 MR. RIDDET: NONE, WHATSOEVER.

19 THE COURT: IS THERE ANY REASON AT ALL WHY WE
20 CANNOT GO FORWARD?

21 MR. RIDDET: NOT THAT I KNOW OF, YOUR HONOR.

22 THE COURT: IN YOUR OPINION IS YOUR CLIENT IN FULL
23 POSSESSION OF HIS FACULTIES?

24 MR. RIDDET: YES.

25 THE COURT: BASED ON THE COURT'S OBSERVATIONS OF

1 THE DEFENDANT, THE DEFENDANT'S RESPONSE AND THE RESPONSES OF
2 COUNSEL, THE COURT FINDS THAT THE DEFENDANT IS IN THE FULL
3 POSSESSION OF HIS FACULTIES.

4 SIR, YOU HAVE A NUMBER OF CONSTITUTIONAL RIGHTS
5 YOU WILL BE GIVING UP BY PLEADING GUILTY. AT THIS TIME, I'M
6 GOING TO TELL YOU ABOUT THOSE RIGHTS: YOU HAVE THE RIGHT TO
7 A SPEEDY AND PUBLIC TRIAL. YOU HAVE THE RIGHT TO BE TRIED
8 BY A JURY. ALTERNATIVELY, YOU HAVE THE RIGHT TO WAIVE JURY
9 TRIAL AND TO BE TRIED BY THE COURT. IN EITHER CASE, YOU
10 HAVE THE RIGHT TO PERSIST IN YOUR PLEA OF NOT GUILTY AND YOU
11 HAVE THE RIGHT TO MAKE THE GOVERNMENT PROVE THAT YOU ARE IN
12 FACT GUILTY BEYOND A REASONABLE DOUBT.

13 YOU HAVE THE RIGHT TO BE REPRESENTED BY AN
14 ATTORNEY THROUGHOUT THESE PROCEEDINGS; AND IF YOU CANNOT
15 AFFORD ONE, ONE WILL BE APPOINTED FOR YOU FREE OF CHARGE.
16 YOU HAVE THE RIGHT TO CONFRONT AND CROSS-EXAMINE ALL
17 WITNESSES CALLED TO TESTIFY AGAINST YOU. YOU HAVE THE RIGHT
18 TO PRESENT WITNESSES ON YOUR OWN BEHALF AND YOU HAVE THE
19 RIGHT TO SUBPOENA WITNESSES. YOU ALSO HAVE THE PRIVILEGE
20 AGAINST SELF-INCRIMINATION; THAT IS, THE RIGHT TO REMAIN
21 SILENT. HOWEVER, BY ENTERING A PLEA OF GUILTY, YOU ARE
22 GIVING UP THAT RIGHT BECAUSE YOU ARE IN FACT INCRIMINATING
23 YOURSELF.

24 YOU HAVE THE RIGHT TO TESTIFY ON YOUR OWN BEHALF,
25 BUT YOU CANNOT BE COMPELLED TO DO SO OR TO INCRIMINATE

1 YOURSELF IN ANY WAY. IF YOU DO NOT TESTIFY, THAT FACT
2 CANNOT BE USED AGAINST YOU AT TRIAL.

3 IN THE EVENT OF A CONVICTION AFTER TRIAL, YOU HAVE
4 THE RIGHT TO APPEAL THE CONVICTION AND THE SENTENCE.

5 HAVE YOU DISCUSSED THESE RIGHTS WITH MR. RIDDET?

6 DEFENDANT JOHNSON: YES, I HAVE, YOUR HONOR.

7 THE COURT: WOULD YOU LIKE ANY ADDITIONAL TIME TO
8 DISCUSS THESE RIGHTS WITH HIM?

9 DEFENDANT JOHNSON: NO, I DON'T NEED THE TIME.
10 THANK YOU.

11 THE COURT: DO YOU UNDERSTAND THAT YOU HAVE THESE
12 RIGHTS AND IF THE COURT ACCEPTS YOUR PLEA OF GUILTY, YOU
13 WILL BE GIVING UP THE RIGHT TO A JURY TRIAL AND ALL THE
14 RIGHTS I HAVE JUST DESCRIBED TO YOU?

15 DEFENDANT JOHNSON: YES.

16 THE COURT: DO YOU GIVE UP THESE RIGHTS?

17 DEFENDANT JOHNSON: YES, I DO.

18 MR. RIDDET: I ASSUME THAT EXCEPTS HIS RIGHT TO
19 COUNSEL IN THESE PROCEEDINGS WITH THE PLEA AND THE
20 SENTENCING. HE'S CERTAINLY NOT GIVING THAT UP.

21 THE COURT: OF COURSE NOT. I ADVISED HIM THAT HE
22 HAD THE RIGHT TO COUNSEL AND HE HAD THE RIGHT TO COUNSEL IF
23 HE COULDN'T AFFORD IT. OF COURSE, HE HAS THE RIGHT TO HIS
24 OWN COUNSEL AND HE DOES HAVE HIS OWN COUNSEL HERE TODAY.

25 MR. RIDDET, ARE YOU SATISFIED THAT EACH OF THESE

1 WAIVERS HAVE BEEN MADE KNOWINGLY AND VOLUNTARILY?

2 MR. RIDDET: I AM, YOUR HONOR.

3 THE COURT: DO YOU JOIN IN AND CONCUR IN EACH OF
4 THE WAIVERS?

5 MR. RIDDET: YES.

6 THE COURT: SIR, PURSUANT TO THE PLEA AGREEMENT,
7 YOU'VE AGREED TO PLEAD GUILTY TO COUNTS TWO THROUGH SEVEN OF
8 THE INDICTMENT, WHICH ARE VIOLATIONS OF SECTIONS 2, 1343 AND
9 1346 OF TITLE 18 AND COUNT 15 OF THE INDICTMENT, VIOLATION
10 OF 18 U.S.C., SECTION 1956(H) FOR CONSPIRACY. EACH OF THE
11 CHARGES BEING FELONIES.

12 MR. STOLPER, WOULD YOU STATE THE ELEMENTS OF EACH
13 OF THE CHARGES, PLEASE.

14 MR. STOLPER: CERTAINLY, YOUR HONOR.

15 WITH RESPECT TO TITLE 18, UNITED STATES CODE
16 SECTIONS 1343, 1346 AND 2, WHICH ARE CHARGED IN COUNTS TWO
17 THROUGH SEVEN OF THE INDICTMENT, THE ELEMENTS ARE AS
18 FOLLOWS:

19 THE DEFENDANT KNOWINGLY CARRIED OUT A SCHEME OR
20 PLAN TO DEPRIVE WAREHOUSE LENDERS OF THEIR INTANGIBLE RIGHT
21 OF HONEST SERVICES. THE DEFENDANT ACTED WITH THE INTENT TO
22 DEPRIVE THE WAREHOUSE LENDERS OF THE INTANGIBLE RIGHT OF
23 HONEST SERVICES AND THE DEFENDANT USED OR CAUSED SOMEONE TO
24 USE WIRE COMMUNICATIONS AND COMMERCE TO CARRY OUT OR ATTEMPT
25 TO CARRY OUT THE SCHEME OR PLAN.

1 WITH RESPECT TO COUNT 15, WHICH CHARGES THE
2 VIOLATION OF 18 USC, SECTION 1956(H), THE FOLLOWING MUST BE
3 TRUE: THERE WAS AN AGREEMENT BETWEEN TWO OR MORE PERSONS TO
4 COMMIT AT LEAST ONE OFFENSE AS CHARGED IN THE INDICTMENT AND
5 THE DEFENDANT BECAME A MEMBER OF THE CONSPIRACY KNOWING OF
6 AT LEAST ONE OF ITS OBJECTS AND ATTEMPTING TO HELP
7 ACCOMPLISH IT.

8 THE COURT: THANK YOU. MR. JOHNSON, DO YOU
9 UNDERSTAND THE NATURE OF THE CHARGES?

10 DEFENDANT JOHNSON: YES, I DO, YOUR HONOR.

11 THE COURT: HAVE YOU DISCUSSED THE CHARGES AND
12 EACH OF THE ELEMENTS WITH MR. RIDDET?

13 DEFENDANT JOHNSON: YES, I HAVE.

14 THE COURT: DO YOU HAVE ANY QUESTIONS ABOUT THE
15 CHARGES AGAINST YOU?

16 DEFENDANT JOHNSON: NO, I DON'T.

17 THE COURT: HAVE YOU BEEN ADVISED OF THE MAXIMUM
18 PENALTIES THAT CAN BE IMPOSED FOR THE CHARGES TO WHICH YOU
19 ARE OFFERING TO PLEAD GUILTY?

20 DEFENDANT JOHNSON: I HAVE, YOUR HONOR.

21 THE COURT: MR. STOLPER, WOULD YOU STATE THE
22 MAXIMUMS, AND IF THERE ARE ANY STATUTORY MINIMUMS, WOULD YOU
23 STATE THOSE PLEASE, ALSO.

24 MR. STOLPER: SURE, YOUR HONOR. THERE ARE NO
25 STATUTORY MINIMUMS IN THE CASE.

1 IN THE EVENT THE DEFENDANT IS CONVICTED ON ALL
2 COUNTS HE IS CHARGED AGAINST THE INDICTMENT, THE STATUTORY
3 MAXIMUM IS: 40 YEARS' IMPRISONMENT; A THREE-YEAR PERIOD OF
4 SUPERVISED RELEASE; A FINE OF \$1,750,000 OR TWICE THE GROSS
5 GAIN OR GROSS LOSS, RESULTING FROM THE OFFENSES, WHICHEVER
6 IS GREATEST, AND A MANDATORY SPECIAL ASSESSMENT OF \$700.

7 THE COURT: THANK YOU.

8 MR. JOHNSON, DO YOU UNDERSTAND THAT THERE IS NO
9 PAROLE AND THAT IF YOU ARE SENTENCED TO PRISON, YOU WILL NOT
10 BE RELEASED ON PAROLE?

11 DEFENDANT JOHNSON: YES.

12 THE COURT: YOU MAY BE SUBJECT TO SUPERVISED
13 RELEASE FOR A NUMBER OF YEARS AFTER YOUR RELEASE FROM
14 PRISON.

15 DO YOU UNDERSTAND THAT IF YOU VIOLATE ANY OF THE
16 TERMS AND CONDITIONS OF SUPERVISED RELEASE, YOU CAN BE GIVEN
17 ADDITIONAL TIME IN PRISON?

18 DEFENDANT JOHNSON: YES.

19 THE COURT: IF YOU ARE PRESENTLY ON PROBATION,
20 PAROLE, OR SUPERVISED RELEASE FOR ANOTHER OFFENSE, YOUR PLEA
21 IN THIS CASE COULD RESULT IN THE VIOLATION OF THE TERMS OF
22 THAT PROBATION, PAROLE, OR SUPERVISED RELEASE AND RESULT IN
23 YOUR SERVING MORE TIME THAN YOU OTHERWISE WOULD.

24 DO YOU UNDERSTAND THIS?

25 DEFENDANT JOHNSON: YES.

1 THE COURT: HAVE YOU DISCUSSED THE POSSIBLE
2 PUNISHMENT, THE FACTS AND THE DEFENSES WITH MR. RIDDET?

3 DEFENDANT JOHNSON: YES, I HAVE.

4 THE COURT: ONE OF THE FACTORS THE COURT WILL
5 CONSIDER IN SENTENCING YOU IS THE SENTENCING REFORM ACT OF
6 1984 AND THE UNITED STATES SENTENCING COMMISSION GUIDELINES.

7 HAVE YOU DISCUSSED THE GUIDELINES WITH MR. RIDDET?

8 DEFENDANT JOHNSON: YES, I HAVE.

9 THE COURT: HAS HE EXPLAINED TO YOU THE VARIOUS
10 ELEMENTS AND FACTORS THAT THE COURT WILL USE TO ANALYZE YOUR
11 SENTENCE UNDER THE GUIDELINES?

12 DEFENDANT JOHNSON: YES.

13 THE COURT: DO YOU UNDERSTAND THAT THE COURT WILL
14 NOT BE ABLE TO DETERMINE THE GUIDELINE SENTENCE FOR YOUR
15 CASE, UNTIL A PRESENTENCE REPORT HAS BEEN PREPARED BY THE
16 PROBATION DEPARTMENT AND YOU AND THE GOVERNMENT HAVE HAD AN
17 OPPORTUNITY TO REVIEW IT AND TO FILE ANY OBJECTIONS YOU MAY
18 HAVE CONCERNING IT?

19 DEFENDANT JOHNSON: YES.

20 THE COURT: THE PRESENTENCE REPORT WILL CONTAIN A
21 RECOMMENDED GUIDELINE RANGE. THERE WILL BE A HIGH AND A LOW
22 TO THAT RANGE. THAT RANGE IS ENTIRELY ADVISORY. I'M NOT
23 BOUND BY IT. THE COURT WILL INDEPENDENTLY CONSIDER BOTH THE
24 PRESENTENCE REPORT AND ANY OBJECTIONS OF THE PARTIES AND
25 WILL ANALYZE YOUR CASE UNDER THE GUIDELINES, TAKING INTO

1 ACCOUNT VARIOUS FACTORS, SUCH AS THE NATURE OF THE CHARGES
2 AGAINST YOU; WHAT YOUR PRIOR RECORD, IF ANY, IS; WHETHER YOU
3 HAVE ACCEPTED RESPONSIBILITY AND WHETHER YOU HAVE OBSTRUCTED
4 JUSTICE.

5 DO YOU UNDERSTAND THAT THIS IS THE PROCESS THE
6 COURT WILL GENERALLY FOLLOW IN SETTING YOUR SENTENCE?

7 DEFENDANT JOHNSON: YES.

8 THE COURT: DO YOU ALSO UNDERSTAND THAT THE
9 GUIDELINE RANGE IS ONLY ADVISORY AND THE COURT MAY DEPART
10 FROM THE GUIDELINES AND IMPOSE A SENTENCE THAT IS MORE OR
11 LESS SEVERE THAN CALLED FOR BY THE GUIDELINES?

12 DEFENDANT JOHNSON: YES, I UNDERSTAND.

13 THE COURT: IN THE END, IT IS THE COURT'S DUTY TO
14 IMPOSE A SENTENCE THAT IS REASONABLE IN LIGHT OF THE
15 GUIDELINES, THE SENTENCING REFORM ACT AND THE FACTS OF THIS
16 CASE.

17 DO YOU UNDERSTAND THAT FOR ALL OF THESE REASONS,
18 NEITHER MR. RIDDET, NOR I CAN TELL YOU TODAY WHICH
19 GUIDELINES APPLY OR WHAT YOUR SENTENCE MAY BE?

20 DEFENDANT JOHNSON: YES, I UNDERSTAND.

21 THE COURT: THE PLEA AGREEMENT HAS BEEN FILED IN
22 THIS CASE, AS I HAVE INDICATED.

23 SIR, HAVE YOU READ THE PLEA AGREEMENT?

24 DEFENDANT JOHNSON: YES, I HAVE.

25 THE COURT: HAVE YOU DISCUSSED THE PLEA AGREEMENT

1 AND ALL OF ITS TERMS WITH MR. RIDDET?

2 DEFENDANT JOHNSON: YES, I HAVE.

3 THE COURT: DID YOU SIGN THE PLEA AGREEMENT?

4 DEFENDANT JOHNSON: YES, I DID.

5 THE COURT: DO YOU UNDERSTAND THE PLEA AGREEMENT
6 AND ALL OF ITS TERMS?

7 DEFENDANT JOHNSON: I BELIEVE I DO, YES.

8 THE COURT: WOULD YOU LIKE ANY ADDITIONAL TIME NOW
9 TO DISCUSS THE PLEA AGREEMENT WITH MR. RIDDET?

10 DEFENDANT JOHNSON: NO.

11 THE COURT: AS YOU STAND HERE, DO YOU HAVE ANY
12 QUESTIONS ABOUT WHAT OBLIGATIONS YOU ARE ASSUMING UNDER THE
13 PLEA AGREEMENT?

14 DEFENDANT JOHNSON: NO.

15 THE COURT: DO YOU UNDERSTAND THAT THE COURT IS
16 NOT A PARTY TO THE PLEA AGREEMENT AND IS NOT BOUND BY ANY OF
17 ITS TERMS?

18 DEFENDANT JOHNSON: YES.

19 THE COURT: AS PART OF THE PLEA AGREEMENT THE
20 GOVERNMENT HAS AGREED TO MAKE CERTAIN RECOMMENDATIONS
21 CONCERNING YOUR SENTENCE. DO YOU UNDERSTAND THAT THE COURT
22 IS NOT A PARTY TO THE AGREEMENT AND IS NOT BOUND BY ANY
23 RECOMMENDATIONS OR AGREEMENTS SET FORTH IN THE PLEA
24 AGREEMENT?

25 DEFENDANT JOHNSON: YES, SIR, I UNDERSTAND.

1 THE COURT: THIS MEANS IF I IMPOSE A SENTENCE THAT
2 IS MORE SEVERE THAN YOU ANTICIPATE, YOU WILL NOT BE ABLE TO
3 WITHDRAW YOUR GUILTY PLEA.

4 DO YOU UNDERSTAND THIS?

5 DEFENDANT JOHNSON: YES, I DO.

6 THE COURT: THE PLEA AGREEMENT ALSO CONTAINS A
7 WAIVER OF YOUR RIGHT TO APPEAL.

8 MR. STOLPER, WOULD YOU READ THOSE PROVISIONS,
9 PLEASE.

10 MR. STOLPER: YES, YOUR HONOR.

11 YOUR HONOR, THE DEFENDANT AND THE GOVERNMENT HAVE
12 ENTERED INTO A LIMITED MUTUAL WAIVER OF APPEAL AND OF
13 COLLATERAL ATTACK. IN THIS WAIVER, THE DEFENDANT HAS GIVEN
14 UP HIS RIGHT TO APPEAL ANY SENTENCE IMPOSED BY THE COURT AND
15 THE MANNER IN WHICH THE SENTENCE IS DETERMINED, PROVIDED
16 THAT THE SENTENCE IS WITHIN THE STATUTORY MAXIMUM SPECIFIED
17 ABOVE AND IS CONSTITUTIONAL, THE COURT IMPOSES A SENTENCE BY
18 APPLYING THE GUIDELINES AND DOES NOT DEPART UPWARD AN
19 OFFENSE LEVEL OR CRIMINAL HISTORY CATEGORY AND DETERMINES
20 THE TOTAL OFFENSE LEVEL IS 23 OR BELOW AND IMPOSES A
21 SENTENCE WITHIN THE RANGE CORRESPONDING TO THE DETERMINED
22 TOTAL OFFENSE LEVEL AND CRIMINAL HISTORY CATEGORY.

23 THE DEFENDANT IS ALSO GIVING UP HIS RIGHT TO BRING
24 A POST-CONVICTION, COLLATERAL ATTACK ON THE CONVICTION OR
25 SENTENCE, EXCEPT A POST-CONVICTION, COLLATERAL ATTACK BASED

1 UPON ANY CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL, NEWLY
2 DISCOVERED EVIDENCE OR RETROACTIVE CHANGE IN THE APPLICABLE
3 SENTENCING GUIDELINES, SENTENCING STATUTES, OR STATUTES OF
4 CONVICTION.

5 THE DEFENDANT DOES RETAIN HIS RIGHT TO APPEAL THE
6 DETERMINATION OF HIS CRIMINAL HISTORY CATEGORY, THE
7 DETERMINATION OF CERTAIN CONDITIONS OF HIS TERMS OF
8 SUPERVISED RELEASE AND THIS COURT'S DETERMINATION OF HIS
9 RESTITUTION.

10 THE COURT: THANK YOU.

11 SIR, DO YOU UNDERSTAND BY ENTERING INTO THE PLEA
12 AGREEMENT AND PLEADING GUILTY, YOU HAVE AGREED TO GIVE UP
13 YOUR RIGHT TO APPEAL ANY SENTENCE YOU RECEIVE IN ACCORDANCE
14 WITH THE TERMS OF THE PLEA AGREEMENT?

15 DEFENDANT JOHNSON: EXCEPT AS TO THE RESTITUTION,
16 YOUR HONOR, YES.

17 THE COURT: RIGHT. DID YOU DISCUSS WAIVING YOUR
18 RIGHT TO APPEAL WITH MR. RIDDET?

19 DEFENDANT JOHNSON: YES.

20 THE COURT: BASED ON THAT CONVERSATION AND HAVING
21 CONSIDERED THE MATTER, DO YOU WISH TO GIVE UP YOUR RIGHT TO
22 APPEAL ON THE TERMS AND CONDITIONS SET FORTH IN THE PLEA
23 AGREEMENT?

24 DEFENDANT JOHNSON: YES, SIR.

25 THE COURT: RESTITUTION IS ANTICIPATED?

1 MR. STOLPER: IT IS, YOUR HONOR.

2 THE COURT: WHAT'S THE PRESENT ANTICIPATED AMOUNT?

3 DEFENDANT JOHNSON: THE GOVERNMENT BELIEVES IT'S
4 IN THE 7 MILLION-DOLLAR RANGE.

5 THE COURT: SIR, DO YOU UNDERSTAND THAT WITH
6 RESPECT TO ANY JUDGMENT OF CONVICTION ENTERED AGAINST YOU,
7 YOU WILL BE DIRECTED TO MAKE RESTITUTION?

8 DEFENDANT JOHNSON: I UNDERSTAND THAT, YOUR HONOR.

9 THE COURT: AND DO YOU UNDERSTAND THAT YOU WILL BE
10 DIRECTED TO MAKE RESTITUTION IN THE AMOUNT OF THE ACTUAL
11 LOSS, WHETHER IT'S 7 MILLION, OR LESS, OR MORE?

12 FOR EXAMPLE, IF THE ACTUAL LOSS PROVEN TO ME BY A
13 PREPONDERANCE OF THE EVIDENCE IS 10 MILLION, I WOULD DIRECT
14 YOU TO MAKE RESTITUTION IN THAT AMOUNT.

15 SO, DO YOU UNDERSTAND THAT THE CURRENT ESTIMATE
16 MAY NOT IN FACT BE THE AMOUNT OF RESTITUTION YOU ARE ORDERED
17 TO MAKE?

18 MR. RIDDET: MAY I HAVE A MOMENT, YOUR HONOR?

19 (PAUSE.)

20 MR. RIDDET: YOUR HONOR, MAY I JUST ADD SOMETHING
21 TO WHAT YOUR HONOR JUST SAID, BECAUSE I THINK WHAT YOUR
22 HONOR SAID IS NOT QUITE WHAT MR. JOHNSON UNDERSTANDS, NOR IS
23 IT WHAT I UNDERSTAND.

24 WHAT MR. JOHNSON AND I UNDERSTAND IS THAT WITH
25 REGARD TO THE AMOUNT OF RESTITUTION, THAT WE WOULD HAVE THE

1 RIGHT TO ARGUE THAT UNDER THE SPECIAL CIRCUMSTANCES OF THIS
2 CASE, RESTITUTION SHOULD NOT BE ORDERED IN THE AMOUNT OF
3 LOSS AND SHOULD BE LESS FOR HIM. WHETHER THAT ARGUMENT
4 PREVAILS OR NOT IS, OF COURSE, UP TO YOU. BUT HE RESERVES
5 THAT RIGHT; AND THAT'S THE REASON HE RESERVED HIS RIGHT TO
6 APPEAL.

7 THE COURT: I APPRECIATE THAT, BUT I'M NOT ASKING
8 HIM AT THIS TIME TO WAIVE HIS RIGHT TO CONTEST RESTITUTION.
9 HE SPECIFICALLY RESERVED THAT.

10 I SIMPLY WISHED TO INFORM YOU, MR. JOHNSON, ONE,
11 THERE IS A CURRENT ESTIMATE OF \$7 MILLION.

12 DO YOU UNDERSTAND THAT?

13 DEFENDANT JOHNSON: YES, I DO.

14 THE COURT: AND DO YOU UNDERSTAND THAT YOU WILL BE
15 ORDERED TO MAKE RESTITUTION IN WHATEVER AMOUNT I FIND BY THE
16 PREPONDERANCE OF THE EVIDENCE IS DUE?

17 DEFENDANT JOHNSON: I'M NOT SURE I UNDERSTAND THE
18 PROCESS IN RELATION TO THIS, BECAUSE --

19 THE COURT: OKAY. ONE OF THE ISSUES THAT'S GOING
20 TO BE LITIGATED AS PART OF THE SENTENCING PROCESS IS
21 PRECISELY HOW MUCH RESTITUTION YOU ARE OBLIGATED TO MAKE.
22 FROM WHAT MR. RIDDET HAS SAID, I ASSUME YOUR POSITION IS
23 GOING TO BE THAT IT'S LESS THAN THE GOVERNMENT'S CURRENT
24 ESTIMATE.

25 DEFENDANT JOHNSON: THAT'S CORRECT.

1 THE COURT: YOU WILL HAVE THE RIGHT TO PRESENT
2 THAT POSITION FULLY. I'LL HEAR MR. RIDDET FULLY ON ANY
3 FACTS HE PRESENTS, ON ANY LEGAL ARGUMENTS HE PRESENTS AND
4 DEPENDING ON WHAT HAPPENS, YOU MAY HAVE THE OPPORTUNITY TO
5 ADDRESS THAT PERSONALLY.

6 BUT AT THE END OF THE DAY, DO YOU UNDERSTAND I
7 WILL SET AN AMOUNT OF RESTITUTION?

8 DEFENDANT JOHNSON: I UNDERSTAND THAT YOU WILL SET
9 AN AMOUNT OF RESTITUTION, YES, SIR, BASED ON THE AMOUNT OF
10 LOSSES. THE PROBLEM THAT I HAVE, I THINK THE AMOUNT OF
11 RESTITUTION, ULTIMATELY, IN MY UNDERSTANDING, WOULD BE BASED
12 ON YOUR DECISION KNOWING ALL THE FACTS AND HEARING ALL THE
13 ARGUMENTS.

14 THE COURT: HOWEVER I CALCULATE IT, I WILL SET AN
15 AMOUNT OF RESTITUTION.

16 DO YOU UNDERSTAND THAT?

17 DEFENDANT JOHNSON: I UNDERSTAND THAT, YOUR HONOR.

18 THE COURT: AND DO YOU UNDERSTAND THAT THE AMOUNT
19 I SET MAY BE MORE THAN THE GOVERNMENT'S ESTIMATE OF
20 \$7 MILLION?

21 DEFENDANT JOHNSON: I UNDERSTAND THAT IT MAY BE
22 MORE OR LESS.

23 THE COURT: OKAY. DO YOU FURTHER UNDERSTAND THAT
24 WHATEVER THE NUMBER IS THAT I ESTABLISH AFTER HAVING
25 AFFORDED YOU AND THE GOVERNMENT A FULL AND FAIR OPPORTUNITY

1 ON THE ISSUE, YOU WILL HAVE TO PAY THAT AMOUNT?

2 DEFENDANT JOHNSON: YES, SIR. SUBJECT TO APPEAL.

3 THE COURT: CORRECT. LET ME COME BACK TO YOUR
4 APPELLATE RIGHTS. BASED ON YOUR DISCUSSION WITH MR. RIDDET
5 AND CONSIDERING THE MATTER, DO YOU WISH TO GIVE UP YOUR
6 RIGHT TO APPEAL ON THE TERMS AND CONDITIONS SET FORTH IN THE
7 PLEA AGREEMENT?

8 DEFENDANT JOHNSON: YES, SIR.

9 THE COURT: ARE YOU A CITIZEN OF THE UNITED
10 STATES?

11 DEFENDANT JOHNSON: YES, SIR.

12 THE COURT: BY BIRTH?

13 DEFENDANT JOHNSON: YES.

14 THE COURT: DO YOU UNDERSTAND THAT A PLEA OF
15 GUILTY MAY DEPRIVE YOU OF VALUABLE CIVIL RIGHTS, SUCH AS THE
16 RIGHT TO VOTE, THE RIGHT TO HOLD PUBLIC OFFICE, THE RIGHT TO
17 SERVE ON A JURY AND THE RIGHT TO POSSESS ANY KIND OF A
18 FIREARM?

19 DEFENDANT JOHNSON: YES.

20 THE COURT: DO YOU UNDERSTAND THAT ANY FEDERAL
21 SENTENCE IMPOSED CANNOT RUN CONCURRENTLY WITH ANY STATE
22 SENTENCE THAT IS NOT BEEN IMPOSED AT THE TIME OF YOUR
23 SENTENCING ON THE FEDERAL CRIMES?

24 DEFENDANT JOHNSON: YES, I UNDERSTAND.

25 THE COURT: LET ME BE CLEAR. I DON'T KNOW WHETHER

1 YOU ARE SUBJECT TO STATE PROSECUTION CURRENTLY OR NOT.

2 DEFENDANT JOHNSON: I'M NOT AWARE OF ANY.

3 THE COURT: WELL, I SIMPLY WISH TO ADVISE YOU IF
4 THERE IS ONE OUT THERE, THE SENTENCE I IMPOSE IN THIS CASE
5 CANNOT RUN CONCURRENTLY, UNLESS THE SENTENCE IN THE STATE
6 CASE HAS ALREADY BEEN IMPOSED.

7 DEFENDANT JOHNSON: OKAY. I UNDERSTAND, YOUR
8 HONOR.

9 THE COURT: OKAY. HAVE ANY PROMISES BEEN MADE TO
10 YOU IN EXCHANGE FOR YOUR PLEA OF GUILTY, OTHER THAN WHAT'S
11 SET FORTH IN THE PLEA AGREEMENT?

12 DEFENDANT JOHNSON: NO, THEY HAVEN'T.

13 THE COURT: HAS ANYONE MADE ANY THREATS AGAINST
14 YOU OR USED ANY FORCE AGAINST YOU, YOUR FAMILY, OR ANYONE
15 NEAR AND DEAR TO YOU TO GET YOU TO PLEAD GUILTY?

16 DEFENDANT JOHNSON: NO, YOUR HONOR.

17 THE COURT: ARE YOU PLEADING GUILTY VOLUNTARILY
18 AND OF YOUR OWN FREE WILL?

19 DEFENDANT JOHNSON: YES.

20 THE COURT: OTHER THAN WHAT IS CONTAINED IN THE
21 WRITTEN PLEA AGREEMENT, OTHER THAN WHAT'S BEEN STATED HERE
22 IN OPEN COURT AND OTHER THAN A GENERAL DISCUSSION OF THE
23 GUIDELINE RANGE WITH MR. RIDDET, HAS ANYONE MADE ANY PROMISE
24 OF LENIENCY, A PARTICULAR SENTENCE, PROBATION, OR ANY OTHER
25 INDUCEMENT OF ANY KIND TO GET YOU TO PLEAD GUILTY?

1 DEFENDANT JOHNSON: NO.

2 THE COURT: HAS ANYONE TOLD YOU WHAT SPECIFIC
3 SENTENCE THE COURT WILL IMPOSE IN THE EVENT THE COURT
4 ACCEPTS YOUR PLEA OF GUILTY?

5 DEFENDANT JOHNSON: NO, YOUR HONOR.

6 THE COURT: HAVE YOU TOLD MR. RIDDET ALL OF THE
7 FACTS AND CIRCUMSTANCES SURROUNDING ANY STATEMENT,
8 CONFESSION, OR OTHER EVIDENCE THAT WAS OBTAINED FROM YOU BY
9 ANYONE?

10 DEFENDANT JOHNSON: I BELIEVE SO. YES.

11 THE COURT: YOU ARE SURE YOU HAVE TOLD HIM
12 EVERYTHING ABOUT THIS CASE?

13 DEFENDANT JOHNSON: TO THE BEST OF MY KNOWLEDGE, I
14 HAVE, YES.

15 THE COURT: MR. STOLPER, WHAT WOULD THE GOVERNMENT
16 PROVE IF THE GOVERNMENT PROCEEDED TO TRIAL?

17 MR. STOLPER: YOUR HONOR, THE GOVERNMENT WOULD
18 PROVE THE FACTS THAT ARE SPELLED OUT IN THE PLEA AGREEMENT
19 ON PAGES 5, 6 AND 7. THOSE ARE THE SINGLE-SPACED FACTS.
20 IT'S A LENGTHY FACTUAL BASIS, YOUR HONOR. I'M HAPPY TO READ
21 IT, IF THE COURT WOULD LIKE.

22 THE COURT: PLEASE.

23 MR. STOLPER: DEFENDANT JOHNSON WAS ASKED BY THE
24 DEFENDANT KENNETH KETNER, WHO IS THE CO-DEFENDANT, TO GO TO
25 WORK WITH HIS COMPANY, MORTGAGE CAPITAL RESOURCES, IN 1998.

1 JOHNSON, A RECENT LAW SCHOOL GRADUATE, HAD KNOWN KETNER
2 SINCE 1985 AND HAD BEEN BUSINESS DEALINGS WITH HIM ON OR OFF
3 SINCE THAT TIME. AS LONG AS JOHNSON HAD KNOWN KETNER,
4 JOHNSON HAD BEEN A HOME BUILDER AND KETNER WAS A MORTGAGE
5 BANKER WHO WAS AN EXPERT IN THE HOME LOAN FIELD.

6 AT THE TIME KETNER ASKED JOHNSON TO GO TO WORK AND
7 UNTIL MCR WENT OUT OF BUSINESS, KETNER WAS IN COMPLETE
8 CHARGE OF MCR. MCR WAS IN THE BUSINESS OF ORIGINATING HOME
9 LOANS AND THEN FUNDING THEM OFF PREEXISTING WAREHOUSE LINES
10 OF CREDIT.

11 KETNER ASKED JOHNSON TO SERVE AS THE CLOSING AGENT
12 FOR MCR'S ATLANTA, GEORGIA LOAN OFFICE. KETNER EXPLAINED
13 THAT MCR'S ATLANTA OFFICE DID A VOLUME BUSINESS IN SMALL 35-
14 TO \$50,000 HOME EQUITY LOANS AND WAS PAYING THEIR PRESENT
15 CLOSING AGENT \$200,000 PER YEAR TO DO MCR'S ATLANTA CLOSING.

16 KETNER PROPOSED THAT IN EXCHANGE FOR HIS STEERING
17 MCR'S BUSINESS TO JOHNSON, THAT JOHNSON WOULD SPLIT THE NET
18 PROFITS FROM THE CLOSINGS BETWEEN HIMSELF, KETNER AND
19 ANOTHER EMPLOYEE OF MCR. JOHNSON, KETNER AND THE OTHER MCR
20 EMPLOYEE DECIDED TO GO FORWARD WITH THE ARRANGEMENT.

21 JOHNSON ASSOCIATED HIMSELF WITH MCR'S EXISTING
22 CLOSING ATTORNEY, REDUCED HIS SALARY TO \$100,000 AND HAD
23 THAT ATTORNEY CONTINUE TO CLOSE MCR'S ATLANTA BRANCH LOANS
24 AS BEFORE.

25 ALTHOUGH JOHNSON WAS TO SUPPOSED TO SERVE AS A

1 NEUTRAL THIRD PARTY BETWEEN THE LENDERS, INCLUDING MCR AND
2 THE BORROWERS, HE SHARED HIS CLOSING VIEWS WITH KETNER.
3 WHEN JOHNSON FIRST TOOK OVER THE CLOSING DUTIES, THE
4 CLOSINGS WERE DONE IN THE FOLLOWING MANNER: ONE, ALWAYS
5 WOULD APPLY FOR LOANS FROM MCR; TWO, MCR WOULD REQUEST LOAN
6 FUNDS FROM ONE OF ITS WAREHOUSE LENDERS; THREE, A WAREHOUSE
7 LENDER WOULD WIRE TRANSFER THE REQUESTED FUNDS TO
8 DEFENDANT JOHNSON'S CLIENT TRUST ACCOUNT; AND FOUR, JOHNSON
9 WOULD CONFIRM THE TRANSACTION MET CERTAIN REQUIREMENTS AND
10 DISBURSE THE FUNDS DIRECTLY TO THE BORROWER OR THEIR
11 DESIGNEES.

12 SHORTLY AFTER JOHNSON TOOK OVER THE CLOSING
13 DUTIES, HE AND KETNER CHANGED THE ARRANGEMENT SUCH THAT
14 JOHNSON NO LONGER DISBURSED THE MONEY. INSTEAD, HE WOULD
15 SEND THE MONEY TO MCR, WHO WAS SUPPOSED TO DISBURSE IT TO
16 BORROWERS. AS PART OF THIS ARRANGEMENT, KETNER WOULD TELL
17 ONE OF JOHNSON'S EMPLOYEES WHAT MONEY TO WIRE AND WHEN.

18 IN FEBRUARY OR MARCH OF 2000, AS THE LOAN VOLUME
19 INCREASED, IT BECAME CLEAR TO JOHNSON THAT KETNER WAS NOT
20 FUNDING LOANS WITH THE WAREHOUSE LENDER'S MONEY THAT WAS
21 TRANSFERRED FROM HIS ACCOUNT TO MCR'S. HE LEARNED THIS
22 BECAUSE HE HEARD FROM PEOPLE AT MCR THAT BORROWERS WERE
23 COMPLAINING THAT THEIR CHECKS WERE BOUNCING. IN MARCH 2000,
24 JOHNSON DRAFTED A LETTER PURPORTEDLY FROM KETNER TO HIMSELF
25 BACKDATED TO MARCH 17TH, 1999 WHICH STATED THAT JOHNSON WAS

1 SUPPOSED TO WIRE THE MONEY HE RECEIVED FROM THE WAREHOUSE
2 LENDERS TO MCR WHO WOULD FUND THE LOANS. JOHNSON HAD
3 KETNER'S ASSISTANCE, SIGNED KETNER'S SIGNATURE ON THE
4 DOCUMENT, TELLING HER -- IT SHOULD BE "HER" -- THAT KETNER
5 APPROVED OF HER DOING SO. JOHNSON DRAFTED THIS LETTER,
6 BECAUSE HE WAS WORRIED KETNER WOULD DENY HE WAS BEHIND THE
7 NEW AND THE ILLEGAL FUNDING ARRANGEMENT. JOHNSON PROVIDED A
8 COPY OF THE LETTER TO KETNER WHO WAS NOT HAPPY WITH THE FACT
9 THAT JOHNSON HAD WRITTEN DOWN THE ARRANGEMENT BUT DID NOT
10 DISPUTE THE FACT THAT MCR HAD BEEN RECEIVING THE WAREHOUSE
11 LENDER'S MONEY.

12 ONCE JOHNSON LEARNED THAT KETNER WAS
13 MISAPPROPRIATING THE WAREHOUSE LENDER'S MONEY, HE CONFRONTED
14 KETNER. KETNER TOLD JOHNSON THERE WAS A PROBLEM WITH THE
15 BANKS AND THAT HE NEEDED TO TIME TO MEET WITH THEM AND WORK
16 THE PROBLEMS OUT. JOHNSON THEN ASKED HIS IN-HOUSE CPA WHAT
17 WAS GOING ON. THE IN-HOUSE CPA, WHO HAD ACCESS TO MCR'S
18 ACCOUNT BALANCES, TOLD JOHNSON THAT ALL THE MONEY IN MCR'S
19 FUNDING ACCOUNT WAS GONE, DESPITE THE FACT THERE SHOULD HAVE
20 BEEN MONEY IN THE ACCOUNT TO FUND NUMEROUS HOME EQUITY
21 LOANS. JOHNSON TOLD KETNER THAT HE WANTED TO CEASE THE FLOW
22 OF MONEY FROM MCR TO ASSESS THE PROBLEM. IN RESPONSE,
23 KETNER SAID, QUOTE, *DON'T EVEN THINK ABOUT IT, AL*, CLOSE
24 QUOTE.

25 KETNER INSISTED THAT, GIVEN TIME, HE COULD WORK

1 OUT THE PROBLEMS WITH THE BANKS. BASED ON THIS PROMISE,
2 JOHNSON CONTINUED TO SEND MONEY DIRECTLY TO MCR'S ACCOUNTS
3 FROM HIS ACCOUNT, RATHER THAN TO CLOSE THE LOANS HIMSELF AS
4 HE WAS OBLIGATED TO DO AS THE CLOSING AGENT.

5 FINALLY, IN JULY OF 2000, JOHNSON SHUT DOWN
6 KETNER'S ABILITY TO WIRE MONEY FROM HIS ACCOUNT. IN TOTAL,
7 OVER \$7 MILLION OF THE MONEY THAT JOHNSON RECEIVED FROM
8 HOUSEHOLD AND WAS WIRED FROM HIS ACCOUNT TO MCR WAS NOT IN
9 TURN USED TO FUND LOANS.

10 DURING THE TIME THAT JOHNSON WAS THE CLOSING
11 AGENT, HE CONTINUED TO SPLIT HIS CLOSING FEES WITH KETNER.
12 NEITHER JOHNSON NOR KETNER WANTED THE MONEY JOHNSON WAS
13 PAYING TO KETNER TO BE TRACED BACK TO JOHNSON. KETNER ALSO
14 TOLD JOHNSON HE WANTED THE, QUOTE, FLEXIBILITY, CLOSE QUOTE,
15 OF AN OFFSHORE ACCOUNT. KETNER AND JOHNSON AGREED TO TREAT
16 THE PAYMENTS AS ADVERTISING EXPENSES.

17 JOHNSON LEARNED THAT ATTORNEY -- THAT AN ATTORNEY
18 WORKING IN THE SAME BUILDING THAT HE AND KETNER WORKED IN, 3
19 HUTTON CENTER, IN SANTA ANA, CALIFORNIA, MIGHT BE OF
20 ASSISTANCE IN CONCEALING THE MONEY, SENDING IT OFFSHORE AND
21 REPATRIATING IT IF NECESSARY. JOHNSON, WITH KETNER'S
22 KNOWLEDGE AND CONSENT, SET UP SHELL COMPANIES CALLED AINSLEY
23 MARKETING ASSOCIATES LIMITED AND SUNBEAM SALES CORP.

24 JOHNSON, AGAIN, WITH KETNER'S KNOWLEDGE AND
25 CONSENT, THEN SET UP BANK ACCOUNTS AT BANK OF NEVES

1 INTERNATIONAL LIMITED AND BANK INTERNATIONAL À LUXEMBOURG.

2 ON JUNE 15, 1999, JOHNSON, WITH KETNER'S KNOWLEDGE
3 AND CONSENT, INCORPORATED THE GOOD CORPORATION, A NEVADA
4 CORPORATION.

5 ON JUNE 28TH 1999, THEY INCORPORATED
6 JOC MONET.COM, ALSO A NEVADA CORPORATION.

7 THE NEXT MONTH JOHNSON, WITH KETNER'S PERMISSION,
8 SET UP BANK ACCOUNTS IN THE NAMES OF THESE SHELL COMPANIES
9 AT HERITAGE BANK OF NEVADA. A NATURAL PERSON HAS TO BE THE
10 SIGNATORY ON THE ACCOUNT. NEITHER KETNER NOR JOHNSON WANTED
11 TO BE THAT SIGNATORY. TO RESOLVE THIS PROBLEM, KETNER
12 OBTAINED A FALSE IDENTIFICATION FROM HIS LONG-TIME FRIEND
13 AND BOOKIE. THE NAME ON THIS IDENTIFICATION AND THE
14 SIGNATORY ON THE ACCOUNTS IS QUOTE, PAUL HERNANDEZ, CLOSE
15 QUOTE.

16 IN JUNE OF 1999, JOHNSON, WITH KETNER'S KNOWLEDGE
17 AND CONSENT, DID A TEST TRANSACTION. JOHNSON CAUSED A
18 \$5,000 CHECK TO BE MADE OUT TO AINSLEY MARKETING ASSOCIATES
19 LIMITED AND TO BE DEPOSITED IN THE NEVES BANK ACCOUNT.

20 ON AUGUST 23, 1999, \$200,465 WAS WIRED FROM BANK
21 INTERNATIONAL À LUXEMBOURG TO BOTH THE GOOD CORPORATION AND
22 THE JOC MONET.COM BANK ACCOUNTS AT THE HERITAGE BANK OF
23 NEVADA.

24 OVER A 10-MONTH PERIOD, KETNER AND JOHNSON CAUSED
25 11 CHECKS TO BE WRITTEN TO AINSLEY MARKETING ASSOCIATES

1 LIMITED TOTALING \$705,000. OF THAT MONEY, 526,430 WAS
2 REPATRIATED TO THE HERITAGE BANK OF NEVADA ACCOUNTS.

3 JUST SO THE RECORD IS CLEAR, YOUR HONOR, THE
4 GOVERNMENT EXPECTS ADDITIONAL FACTS MIGHT COME OUT AT TRIAL,
5 BUT THE GOVERNMENT BELIEVES THAT'S SUFFICIENT AS A FACTUAL
6 BASIS.

7 THE COURT: MR. JOHNSON, DO YOU UNDERSTAND WHAT
8 THE ASSISTANT UNITED STATES ATTORNEY HAS SAID?

9 DEFENDANT JOHNSON: YES, I DO.

10 THE COURT: IS EVERYTHING THE ASSISTANT UNITED
11 STATES ATTORNEY SAID ABOUT YOU, YOUR CONDUCT AND INTENT TRUE
12 AND CORRECT?

13 DEFENDANT JOHNSON: YES, IT IS.

14 THE COURT: DID YOU DO WHAT HE SAID IN HIS
15 STATEMENT?

16 DEFENDANT JOHNSON: YES, I DID.

17 THE COURT: ARE YOU PLEADING GUILTY BECAUSE YOU
18 ARE, IN FACT, DID THE FACTS -- DID THE ACTS ALLEGED IN
19 COUNTS TWO THROUGH SEVEN AND 15 OF THE INDICTMENT?

20 DEFENDANT JOHNSON: YES.

21 THE COURT: TELL ME IN YOUR OWN WORDS WHAT YOU
22 DID, SIR.

23 DEFENDANT JOHNSON: I AGREED TO SPLIT CLOSING FEES
24 WITH A NONATTORNEY AND I SET UP OFFSHORE ACCOUNTS AND NEVADA
25 ACCOUNTS AND COMPANIES TO DISGUISE THE PAYMENT.

1 AND WHEN I RELEASED THAT MR. KETNER HAD LIED TO ME
2 AND WAS MISAPPROPRIATING MONIES THAT I WAS SENDING HIS
3 COMPANY, I MADE THE FATAL ERROR OF NOT STOPPING THE ACTIVITY
4 AT THE TIME BUT ALLOWING IT TO CONTINUE, IN HOPES THAT HE
5 WOULD BE ABLE TO NEGOTIATE SOMETHING OUT WITH THE BANKS, AND
6 THAT WAS ILLEGAL.

7 THE COURT: COUNT TWO THROUGH SEVEN REFER TO
8 SPECIFIC -- TO SIX SPECIFIC WIRE TRANSFERS OF FUNDS FROM
9 HOUSEHOLD BANK IN ILLINOIS TO SANWA BANK IN ORANGE COUNTY.

10 DID YOU PARTICIPATE OR IN ANY WAY CAUSE THOSE
11 FUNDS TO BE WIRE-TRANSFERRED?

12 DEFENDANT JOHNSON: MAY I REVIEW THOSE FOR A
13 SECOND, YOUR HONOR?

14 THE COURT: SURE.

15 (PAUSE.)

16 DEFENDANT JOHNSON: I DID NOT CAUSE THOSE WIRES TO
17 BE MADE TO MY ACCOUNT, NO. THOSE WERE MADE BY HOUSEHOLD
18 BANK INTO MY ACCOUNT, YOUR HONOR.

19 THE COURT: DID YOU IN ANY WAY CAUSE THAT TO
20 HAPPEN?

21 MR. RIDDET: MAY I HAVE A MOMENT?

22 (PAUSE.)

23 DEFENDANT JOHNSON: I'M SORRY. IF YOU WOULD LIKE
24 TO RESTATE YOUR QUESTION.

25 THE COURT: DID YOU IN ANY WAY PARTICIPATE OR

1 CAUSE OR SOLICIT THE FUNDS REFERENCED IN COUNTS TWO THROUGH
2 SEVEN TO BE TRANSFERRED FROM HOUSEHOLD BANK IN ILLINOIS TO
3 SANWA BANK IN ORANGE COUNTY?

4 DEFENDANT JOHNSON: YES, YOUR HONOR, I WAS AWARE
5 THAT THOSE FUNDS WOULD BE TRANSFERRED INTO MY ACCOUNT.

6 THE COURT: HOW WERE YOU AWARE?

7 DEFENDANT JOHNSON: WELL, I KNEW THAT I HAD
8 AUTHORIZED THE -- THE PROCEDURE TO CONTINUE, AND THE
9 PROCEDURE AT THAT TIME WAS THAT MCR WOULD INFORM HOUSEHOLD
10 THAT THEY WERE READY TO FUND CERTAIN LOANS AND THAT THOSE
11 FUNDS NECESSARY TO FUND THOSE LOANS WOULD THEN BE WIRED INTO
12 MY ACCOUNT.

13 THE COURT: IS THE GOVERNMENT SATISFIED WITH THE
14 FACTUAL BASIS FOR THE PLEA?

15 DEFENDANT JOHNSON: YES, YOUR HONOR.

16 THE COURT: ARE YOU PLEADING GUILTY BECAUSE YOU
17 ARE IN FACT GUILTY?

18 DEFENDANT JOHNSON: I AM GUILTY, YOUR HONOR.

19 THE COURT: MR. RIDDET, HAVE YOU REVIEWED THE
20 FACTS OF THE CASE AND ALL THE DISCOVERY THAT THE GOVERNMENT
21 MAY HAVE PROVIDED TO YOU IN THIS CASE?

22 MR. RIDDET: I HAVE, YOUR HONOR.

23 THE COURT: HAVE YOU VIEWED THE FACTS OF THE CASE
24 AND THE DISCOVERY WITH YOUR CLIENT?

25 DEFENDANT JOHNSON: I HAVE.

1 THE COURT: HAVE YOU ADVISED MR. JOHNSON
2 CONCERNING THE LEGALITY OR THE ADMISSIBILITY OF ANY
3 STATEMENTS OR CONFESSIONS OR OTHER EVIDENCE THE GOVERNMENT
4 MAY HAVE AGAINST HIM?

5 MR. RIDDET: YES, YOUR HONOR.

6 THE COURT: IS THE DEFENDANT PLEADING GUILTY
7 BECAUSE OF ANY ILLEGALLY OBTAINED EVIDENCE IN THE POSSESSION
8 OF THE GOVERNMENT THAT YOU ARE AWARE OF?

9 MR. RIDDET: NO.

10 THE COURT: DID YOU EXPLORE WITH MR. JOHNSON ANY
11 POSSIBLE DEFENSES HE MAY HAVE?

12 MR. RIDDET: WE EXPLORED THAT IN DEPTH.

13 THE COURT: DO YOU BELIEVE THAT THERE IS A FACTUAL
14 BASIS FOR THE PLEA THAT THE DEFENDANT IS OFFERING?

15 MR. RIDDET: I DO.

16 THE COURT: HAVE YOU CONFERRED WITH AND ADVISED
17 MR. JOHNSON REGARDING THIS GUILTY PLEA?

18 MR. RIDDET: YES.

19 THE COURT: DO YOU BELIEVE THAT THE PLEA IS BEING
20 MADE FREELY AND VOLUNTARILY WITH A FULL UNDERSTANDING OF THE
21 CHARGES AND THE CONSEQUENCE OF THE PLEA?

22 MR. RIDDET: YES.

23 THE COURT: THE WRITTEN PLEA AGREEMENT INDICATES
24 THAT IT WAS SIGNED BY YOU AND MR. JOHNSON ON MARCH 14TH,
25 2005; IS THAT CORRECT?

1 MR. RIDDET: YOU ARE ASKING ME, YOUR HONOR?

2 THE COURT: YES.

3 MR. RIDDET: THAT IS CORRECT.

4 THE COURT: MR. RIDDET, DID MR. JOHNSON SIGN THE
5 PLEA AGREEMENT IN YOUR PRESENCE?

6 MR. RIDDET: YES, HE DID.

7 THE COURT: DID YOU DISCUSS THE PLEA AGREEMENT
8 WITH HIM, PRIOR TO HIS SIGNING IT?

9 MR. RIDDET: YES.

10 THE COURT: HOW EXTENSIVE -- NUMBER OF HOURS,
11 DAYS -- OVER WHAT PERIOD OF TIME WAS YOUR DISCUSSION?

12 MR. RIDDET: MANY HOURS. THIS PLEA AGREEMENT WENT
13 THROUGH A NUMBER OF DRAFTS AND MR. JOHNSON AND I HAD
14 ENUMERABLE CONVERSATIONS, I WOULD SAY AT LEAST FOUR OR FIVE
15 HOURS OF DISCUSSIONS ABOUT THE PLEA AGREEMENT AND FINAL
16 TERMS.

17 THE COURT: OVER HOW MANY DAYS OR WEEKS?

18 MR. RIDDET: OVER A COUPLE OF WEEKS.

19 THE COURT: DOES THE PLEA AGREEMENT REPRESENT THE
20 ENTIRE DISPOSITION OF THIS CASE, INsofar AS YOU, MR. JOHNSON
21 AND THE UNITED STATES ATTORNEY'S OFFICE IS CONCERNED?

22 MR. RIDDET: YES, IT DOES.

23 THE COURT: HAVE THERE BEEN ANY PROMISES OR
24 REPRESENTATIONS OR GUARANTEES MADE EITHER TO YOU OR TO
25 MR. JOHNSON, OTHER THAN WHAT'S CONTAINED IN THE PLEA

1 AGREEMENT?

2 MR. RIDDET: NO, YOUR HONOR.

3 THE COURT: OTHER THAN WHAT'S CONTAINED IN THE
4 PLEA AGREEMENT, OTHER THAN WHAT HAS BEEN STATED HERE IN OPEN
5 COURT AND OTHER THAN A GENERAL DISCUSSION OF THE GUIDELINES
6 WITH MR. JOHNSON, HAVE YOU MADE ANY INDICATION TO HIM OF
7 WHAT SPECIFIC SENTENCE THE COURT WOULD IMPOSE OR CONVEY TO
8 MR. JOHNSON ANY PROMISE OF A PARTICULAR SENTENCE IN THE
9 EVENT THAT THE COURT ACCEPTS HIS PLEA?

10 MR. RIDDET: I HAVE GIVEN MY OPINION ON WHAT MIGHT
11 HAPPEN AT SENTENCING, BUT CERTAINLY NO PROMISES.

12 THE COURT: IN YOUR JUDGMENT, IS IT IN
13 MR. JOHNSON'S BEST INTERESTS AND IN THE INTEREST OF JUSTICE
14 FOR ME TO ACCEPT HIS PLEA?

15 MR. RIDDET: IT IS, YOUR HONOR.

16 THE COURT: DO YOU KNOW OF ANY REASON WHY THE
17 COURT SHOULD NOT ACCEPT HIS PLEA?

18 MR. RIDDET: NONE, WHATSOEVER.

19 THE COURT: MR. STOLPER, OTHER THAN WHAT IS
20 EXPRESSLY CONTAINED IN THE WRITTEN PLEA AGREEMENT, HAS THE
21 GOVERNMENT MADE ANY OTHER PROMISES, REPRESENTATIONS, OR
22 GUARANTEES TO THE DEFENDANT OR HIS COUNSEL?

23 MR. STOLPER: NO, YOUR HONOR.

24 THE COURT: IS THE INTENDED PLEA AGREEMENT PART OF
25 ANY OTHER JOINT AGREEMENT WITH ANY OTHER DEFENDANT OR

1 POTENTIAL DEFENDANT?

2 MR. STOLPER: NO, YOUR HONOR.

3 THE COURT: MR. JOHNSON, ARE YOU SATISFIED WITH
4 THE REPRESENTATION THAT MR. RIDDET HAS PROVIDED TO YOU IN
5 THIS CASE?

6 DEFENDANT JOHNSON: YES, I AM, YOUR HONOR.

7 THE COURT: DO YOU FEEL THAT HE HAS FULLY
8 CONSIDERED ANY DEFENSE YOU MAY HAVE TO THE CHARGES?

9 DEFENDANT JOHNSON: YES.

10 THE COURT: DO YOU BELIEVE THAT HE HAS FULLY
11 ADVISED YOU CONCERNING THIS MATTER?

12 DEFENDANT JOHNSON: YES.

13 THE COURT: DO YOU FEEL THAT YOU HAVE HAD ENOUGH
14 TIME TO DISCUSS THIS CASE WITH HIM?

15 DEFENDANT JOHNSON: YES.

16 THE COURT: WOULD YOU LIKE ANY ADDITIONAL TIME
17 NOW?

18 DEFENDANT JOHNSON: NO, SIR.

19 THE COURT: DID MR. RIDDET OR ANYONE TELL YOU HOW
20 TO ANSWER ANY OF THE QUESTIONS I HAVE ASKED TODAY?

21 DEFENDANT JOHNSON: NO.

22 THE COURT: DO YOU FEEL THAT YOU UNDERSTAND
23 EVERYTHING THAT'S GOING ON HERE TODAY, THE CONSEQUENCE TO
24 YOU AND THAT YOU ARE COMPETENT TODAY TO ENTER YOUR PLEA OF
25 GUILTY?

1 DEFENDANT JOHNSON: YES.

2 THE COURT: DO YOU KNOW OF ANY REASON WHY THE
3 COURT SHOULD NOT ACCEPT YOUR PLEAS OF GUILTY?

4 DEFENDANT JOHNSON: NO.

5 THE COURT: DO YOU UNDERSTAND THEN THAT ALL THAT
6 IS LEFT IN YOUR CASE IN THE EVENT THAT I ACCEPT YOUR PLEAS
7 IS THE IMPOSITION OF SENTENCE, WHICH MAY INCLUDE
8 IMPRISONMENT?

9 DEFENDANT JOHNSON: YES, I UNDERSTAND, YOUR HONOR.

10 THE COURT: HAVING IN MIND ALL WE HAVE DISCUSSED
11 REGARDING YOUR PLEA OF GUILTY, THE RIGHTS YOU WILL BE GIVING
12 UP AND THE MAXIMUM SENTENCE YOU MIGHT RECEIVE, IS IT STILL
13 YOUR DESIRE TO PLEAD GUILTY?

14 DEFENDANT JOHNSON: YES, SIR.

15 THE COURT: HOW DO YOU PLEAD TO COUNT TWO OF THE
16 INDICTMENT?

17 DEFENDANT JOHNSON: GUILTY.

18 THE COURT: HOW DO YOU PLEAD TO COUNT THREE OF THE
19 INDICTMENT?

20 DEFENDANT JOHNSON: GUILTY.

21 THE COURT: HOW DO YOU PLEAD TO COUNT FOUR OF THE
22 INDICTMENT?

23 DEFENDANT JOHNSON: GUILTY.

24 THE COURT: HOW DO YOU PLEAD TO COUNT FIVE OF THE
25 INDICTMENT?

1 DEFENDANT JOHNSON: GUILTY.

2 THE COURT: HOW DO YOU PLEAD TO COUNT SIX OF THE
3 INDICTMENT?

4 DEFENDANT JOHNSON: GUILTY.

5 THE COURT: HOW DO YOU PLEAD TO COUNT SEVEN OF THE
6 INDICTMENT?

7 DEFENDANT JOHNSON: GUILTY.

8 THE COURT: HOW DO YOU PLEAD TO COUNT 15 OF THE
9 INDICTMENT?

10 DEFENDANT JOHNSON: GUILTY, YOUR HONOR.

11 THE COURT: I'M GOING TO MAKE CERTAIN FINDINGS.
12 IF YOU DON'T UNDERSTAND WHAT I SAY, OR IF YOU DISAGREE WITH
13 WHAT I SAY, OR IF YOU WOULD LIKE TO CONSULT WITH MR. RIDDET,
14 PLEASE STOP ME OR ASK MR. RIDDET TO STOP ME.

15 THE COURT, HAVING QUESTIONED THE DEFENDANT ON HIS
16 COUNSEL AND HIS OFFER TO PLEAD GUILTY TO COUNTS TWO THROUGH
17 SEVEN AND 15 OF THE INDICTMENT, EACH A FELONY, THE DEFENDANT
18 AND HIS COUNSEL HAVING ADVISED THE COURT THAT THEY HAVE
19 CONFERRED CONCERNING THE OFFER PLEAS OF GUILTY AND ALL
20 ASPECTS OF THE CHARGES AGAINST THE DEFENDANT AND ANY
21 DEFENSES HE MAY HAVE AND THE COURT HAVING OBSERVED THE
22 DEFENDANT'S INTELLIGENCE, DEMEANOR AND ATTITUDE WHILE
23 ANSWERING QUESTIONS AND THE COURT HAVING OBSERVED THAT THE
24 DEFENDANT DOES NOT APPEAR TO BE UNDER THE INFLUENCE OF ANY
25 MEDICINE, DRUG, OR OTHER SUBSTANCE OR FACTOR WHICH MIGHT

1 AFFECT HIS ACTIONS OR JUDGMENT IN THIS MATTER, THE COURT
2 NOW, THEREFORE, FINDS THAT THERE IS A FACTUAL BASIS FOR THE
3 PLEA.

4 THE COURT FINDS THAT ALLEN JOHNSON HAS ENTERED HIS
5 PLEA FREELY AND VOLUNTARILY WITH A FULL UNDERSTANDING OF THE
6 CHARGES AGAINST HIM AND THE CONSEQUENCES OF HIS PLEA. THE
7 COURT FINDS THAT THE DEFENDANT UNDERSTANDS HIS
8 CONSTITUTIONAL AND STATUTORY RIGHTS AND WISHES TO WAIVE
9 THEM.

10 ACCORDINGLY, IT IS ORDERED THAT THE PLEA BE
11 ACCEPTED AND THAT IT BE ENTERED IN THE RECORDS OF THIS
12 COURT.

13 IT'S MY UNDERSTANDING THAT THE PARTIES HAVE AGREED
14 THAT SENTENCING WILL TAKE PLACE ON JANUARY 23, 2006, AT
15 9 A.M.; IS THAT CORRECT?

16 MR. RIDDET: YES, IT IS, YOUR HONOR.

17 MR. STOLPER: YES, YOUR HONOR.

18 THE COURT: SIR, YOU ARE ORDERED TO APPEAR AT THAT
19 TIME AND ON THAT DATE WITHOUT FURTHER ORDER OF THE COURT.

20 DO YOU UNDERSTAND THAT?

21 DEFENDANT JOHNSON: YES, SIR.

22 THE COURT: IN THE INTERIM, THE CASE WILL BE
23 REFERRED TO THE PROBATION DEPARTMENT FOR THE PREPARATION OF
24 A PRESENTENCE REPORT. YOU WILL BE ASKED TO GIVE INFORMATION
25 FOR THE REPORT, AND YOU WILL HAVE AN OPPORTUNITY TO READ THE

1 REPORT AND TO SPEAK AT THE SENTENCING HEARING. I URGE YOU
2 TO CONSULT WITH MR. RIDDET THROUGHOUT THIS PROCESS SO THAT
3 HE CAN ANSWER ANY QUESTIONS YOU MAY HAVE.

4 IS THE DEFENDANT TO REMAIN FREE OF BOND?

5 MR. STOLPER: YES, YOUR HONOR. THE GOVERNMENT
6 STIPULATES HE IS NEITHER A DANGER NOR A FLIGHT RISK.

7 THE COURT: THE DEFENDANT TO REMAIN FREE ON BOND.
8 ANYTHING FURTHER THIS MORNING?

9 MR. RIDDET: NO, YOUR HONOR.

10 MR. STOLPER: NO, YOUR HONOR.

11 THE COURT: THANK YOU VERY MUCH.

12 MR. STOLPER: THANK YOU, YOUR HONOR.

13 *(PROCEEDINGS ADJOURNED.)*

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CERTIFICATE

I HEREBY CERTIFY THAT PURSUANT TO SECTION 753,
TITLE 28, UNITED STATES CODE, THE FOREGOING IS A TRUE AND
CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED
PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE
TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATE: AUGUST 11, 2008

DEBORAH D. PARKER, OFFICIAL REPORTER

DEBORAH D. PARKER, U.S. COURT REPORTER